IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07/10/2003

Coram

The Honourable Mr. Justice A.K. RAJAN

W.P. No.19140 of 2002

1. The Secretary,
Board of Matriculation
Examination, Chennai - 6.
2. The Inspector of Matriculation
Schools,
Thallakulam, Madurai - 2.
3. The Secretary to
Tamil Nadu Government,
Education Department,
Fort St.George, Chennai - 9. .. Petitioners

-Vs-

1. SRC. Bhandari.
2. S. Abishek Bhandari
3. The President,
District Consumer Disputes
Redressal Forum,
Chennai (South),
Mylapore, Chennai 4. .. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a Writ of Certiorari as stated therein.

For petitioners: Mr. R. Vijayakumar,
Government Advocate

For respondents: Mr. P.N. Swaminathan for R1&R2

:O R D E R
The writ petition has been filed against the award passed by
the District Consumer Disputes Redressal Forum, Chennai.
2. The first respondent is the father and the second
respondent is the son. On 9.9.1999, they have lost Matriculation Examination
Mark Sheet while they were travelling in a bus at Anna Nagar, Chennai. The
second respondent filed a complaint on 10.9.1999 before the Inspector of
Police, K-4 Police Station, Anna Nagar, and the said Inspector of Police gave
a certificate dated 18.9.1999 to the effect that inspite of their best
efforts, they could not trace out the missed certificate and the complaint had

been treated as untraceable. Thereafter, it was published in the official Gazette about the missed certificate. Subsequently, the 2nd respondent applied for duplicate copy of the Certificate and paid a sum of Rs.102/- towards the fee payable for issuance of such certificate. Inspite of the fact that he paid necessary fee, he was not given the duplicate copy of the Certificate as requested but when enquired on 12.9.2000, the 2nd respondent was directed to produce a certificate from the Head Master of the School, and that was also complied with. Even then, the duplicate copy of the Certificate was not issued and the authorities were asking one or the other particulars which were not necessary. Thereafter, They also asked for a certificate from the revenue authorities. Finding that the authorities were not giving the duplicate copy of the Certificate as requested by them, the respondents herein filed a complaint before the District Consumer Redressal Forum at Chennai. They also claim compensation of Rs.5,00,000/- (Rupees five lakh only) for the mental agony and grief suffered by them for the non-issuance of the duplicate copy of the certificate, and also for the 2nd respondent having lost a prospective employment in USA. Such compensation was calculated at Rs.2,00,000/- for the first respondent and Rs.3,00,000/- for the second respondent. The District Consumer Disputes Redressal Forum, Chennai passed an award granting Rs.5,00,000/- (Rupees five lakh only) towards compensation as claimed by the complaints/respondents herein.

3. Aggrieved by that order, the present writ petition has been filed by the Department on the ground that the said Redressal Forum has no jurisdiction to decide the case of the complainants/respondents herein since they are not the consumers and what is rendered by the petitioners herein are not "service" within the meaning of the Consumer Protection Act and therefore, the order passed by the Redressal Forum is illegal and without any jurisdiction.

4. Learned Government Advocate appearing for the petitioners submits that the impugned order has been passed without jurisdiction. The act of non-issuance of duplicate copy of the Certificate does not fall within the definition of "service" under the Consumer Protection Act. Further, the respondents 1 & 2 are not "consumers" within the meaning of the Consumer Protection Act and therefore, the said Redressal Forum has no jurisdiction to decide the issue and as such, the order passed by it has to be quashed.

5. Learned counsel appearing for the respondents-1&2 submits that, under the Consumer Protection Act, the respondents have got right to move the Redressal Forum. They have paid necessary fee for getting duplicate copy of the Certificate. Even after two years, such certificate was not given to them. Therefore, there is a deficiency in service rendered by the petitioners and hence the complaint is maintainable. He referred to the judgment of the Hon'ble Supreme Court reported in III (1999) CPJ 36 (SC) Regional Provident Fund Commissioner vs. Shiv Kumar Joshi wherein the Hon'ble Supreme Court has held as follows:

"The definition of consumer is wide and covers in its ambit not only the goods but also services, bought or hired, for consideration. Such consideration be paid or promised or partly paid or partly promised under any system of deferred payment and includes any beneficiary of such person

other than the person who hires the service for consideration. The Act is aimed to protect the interests of a consumer as understood in commercial sense of the term as 'purchaser of goods' and in larger sense 'user of services'. The important characteristic of goods and service under the Act is that such goods are supplied at a price to cover the costs which consequently result in profit or income to the seller of goods or provider of service. The definition excludes a person who obtains such goods for re-sale or for any commercial purposes. However, the services hired for consideration even for commercial purposes have not been excluded. A reference to the definition of 'service' unambiguously indicates that the definition is not restrictive and includes within its ambit such services as well which are specified therein. However, services hired or availed, which are free of charge, or under a contract of personal service, have specifically been excluded".

6. From this, learned counsel for the respondents-1&2 submits that when the Provident Fund Commissioner is said to render 'service', the authorities herein also render service, which includes giving duplicate copy of the Certificate, hence that is within the meaning of the service defined the Consumer Protection Act and therefore, the respondents are the consumers within the 'Act'. Hence, the order passed by the Consumer Redressal Forum is legally sustainable. At the same, learned counsel for the respondents referred to another Division Bench's judgment of this Court viz. 1995-1 L.W. 385 (The Registrar, University of Madras etc., and another vs. Union of India and 2 others). In this case, it was held that the words, "Consumer" and "service" in Section 2(1)(d) and 2(1)(o) are relatable in commercial and trade oriented activities in the context of the fair and restrictive trade practices and not otherwise. Therefore, the 'Act' is not applicable to Educational institutions and Universities. But, the learned counsel for the respondents 1 & 2 submits that since they paid the fee for issuance of duplicate certificate and this is a service rendered by the department and therefore, the said respondents becomes consumers.

7. The Consumer Protection Act gives protection to the consumers and also provides relief wherever there is a deficiency in the service rendered. The Act defines "consumer under Section 2(1) (d) and " service" u/s.2(1)(o) as follows:
"(d) "consumer" means any person who-
(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose: or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid or partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first

mentioned person but does not include a person who avails of such services for any commercial purposes"
2(1)(o) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both housing construction entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service".
8. These words have already been interpreted by the Supreme Court, which was referred by the counsel for the respondents, in the case of Regional Provident Fund Commissioner vs. Shiv Kumar Joshi (III (199 9) CPJ 36 (SC)) in para 6 as follows:
"The combined reading of the definitions of "consumer" and " service" under the Act and looking at the aims and object for which the Act was enacted, it is imperative that the words words "consumer" and " service" as defined under the Act should be construed to comprehend consumer and services of commercial and trade oriented nature only. Thus any person who is found to have hired services for consideration shall be deemed to be a consumer notwithstanding that the services were in connection with any goods or their user. Such services may be for any connected commercial activity and may also relate to the services as indicated in Section 2(1)(o) of the Act".

9. Even prior to that, the Madras High Court in 1995-1 L.W. 385 (The Registrar, University of Madras etc., and another vs. Union of India and 2 others) cited by the learned counsel for the respondents 1 & 2 , has held that the Educational institutions and Universities do not fall within the definition of "consumer" and "service". The argument that since the service rendered by Provident Fund Commissioner is service in the sense of the Consumer Protection Act, the services of the Education Department also could be construed as service is not acceptable. The Provident Fund Commissioner has been created under the Act and he is enforcing the claim as provided under the Act and therefore it is considered to be a service and such proposition cannot be extended to the present case where the application for issuance of duplicate copy of the Certificate has been submitted to the Board of Matriculation Examination, Chennai.

10. The Board of Matriculation Examination is a Governmental authority and it is exercising its sovereign power. By no stretch of imagination, the functions exercised by the Board of Matriculation Examination could be construed to be a "trade or commercial activity" and therefore, it cannot be said that its activity is "service" within the meaning of the "Consumer Protection Act" and the said respondents cannot be as a "consumer" within the meaning of the Act. Therefore, the respondents 1 & 2 do not fall within the definition of consumer under the Act. Therefore, the Consumer

Protection Act has no application to the facts and figures of the present case. Consequently, the Consumer Redressal Forum has no jurisdiction to entertain this complaint.

11. Learned counsel for the respondents 1 & 2 submits that

the petitioners herein have not exhausted the appeal remedy provided for under the Act and, since the alternative remedy has not been exhausted, the writ petition is not maintainable.

12. This argument, though attractive, is not acceptable in this case as the very fact that this writ petition has been filed on the ground that the Consumer Redressal Forum has no jurisdiction to entertain the complaint against the petitioners herein, goes to the very root viz., jurisdictional aspect. In as much as the writ petition has been filed challenging the jurisdiction of the Consumer's Redressal Forum, the question of non-exhaustion of alternative remedy does not arise at all. Therefore, the writ petition is maintainable.
13. In the result, the order passed by the Consumer Redressal Forum is set aside as the order had been passed without jurisdiction.

14. Before parting with this case, this Court is of the view, that it has to refer some aspects which are prevailing in the Consumer Redressal Forum. The Consumer Redressal Forum awards fanciful claims even in the absence of acceptable evidence, which is only detrimental in the ultimate analysis. It is not uncommon for the Consumer Redressal Forum to pass awards even in cases where the claims are not proved with any evidence. The Consumer Redressal Forum shall restrain from awarding fanciful compensation.

15. At the same time, this Court cannot ignore the suffering of the persons similar to respondents by not getting duplicate copy of the certificate in time. In this case, the respondents 1& 2 have done all that was required by them viz., payment of fee, also providing certificate from the Head Master of the School but inspite of that, Certificate was not given for two years. The authorities cannot show any acceptable or valid reason for not issuing the duplicate copy of the certificate for two years. This shows the lethargy and indifference on the part of the Government Employees resulting in untold misery to the citizens; yet they go without any compensation for the loss they suffer because of the acts of the Government employees. This is a case where there is no accountability for the Government services. No authority wants to enforce the rules and regulations. Had only the superior officer exercised proper care, this delay of two years could have been avoided and the young and energetic (the second respondent) could have got settled in the life; he has been deprived of his employment opportunities. It is for the authorities to see that the rules are enforced properly and the small requests such as issuing duplicate certificate can be complied with then and there without any delay whatsoever. Unless the authorities enforce the rules by taking appropriate disciplinary action, this kind of sufferings of the citizens will continue. It is a fit and proper case where the authorities must initiate action against those persons who are responsible for not issuing the duplicate copy of certificate within the time. This Court is of the view that they would initiate departmental action on all those persons who are responsible for not issuing the duplicate copy of the certificate immediately.

16. Instead of wasting two years, awaiting for the certificate to be issued, the respondents-1&2 could have approached this Court by way of Writ of Mandamus and the respondents could have got the certificate

very much early. The respondents approached the wrong forum.

17. With the above observation, the writ petition is allowed.
No costs.

Index: yes
Internet: yes
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To
The President,
District Consumer Disputes
Redressal Forum,
Chennai (South),
Mylapore, Chennai 4.